

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

C.M.A.No.3 of 2016

and

CMP.No.11 of 2016

The Union of India owning
Southern Railway,
rep. by its General Manager,
Chennai.

... Appellant

Vs.

1.Santhi @ Santha

2.Sathyannarayan Rao

3.Lakshmi Rao

4.Eswari Rao

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the order passed by the Railway Claims Tribunal, Chennai Bench made in O.A.No.(II-U) 150/2013 dated 15.11.2013.

For Appellant : Mr.A.P.Srinivas

JUDGMENT

Aggrieved by the award dated 15.11.2013 passed in O.A.No. (II-U) 150/2013 by the learned Railway Claims Tribunal, Chennai Bench, the General Manager, Union of India has preferred this appeal.

2.The Tribunal has awarded a sum of Rs.4 lakhs as compensation along with interest at the rate of 6% from 13.05.2015 till the date of order passed and thereafter, 9% p.a. till the date of actual payment for the deceased Mr.Appa Rao aged about 57 years who was a retired employee from Air Force.

3. Heard the learned counsel for the appellant and perused the materials available on record.

4. Mr. A. P. Srinivas, learned counsel for the appellant submitted that the learned Claims Tribunal had passed the impugned award on mere surmises and presumptions by brushing aside the defence taken by the appellant under Sections 123 & 124 of the Railway Act, 1989. He would submit that no doubt that the deceased was holding the ticket for journey from Velankanni to Bangalore on 15.05.2012 and travelled in Train No. 17316, but, however during the journey, he got down from the train at Ponmalai Railway Station which is an unscheduled stoppage and when the train started to move, he was not able to board the train, as a result, he fell down from the train which resulted in his death that reveals the fact that there is no negligence contributed by the railway authorities and further contended that it is purely due to the negligence of the deceased who suffered fatal injury and hence, he would submit that the appellant/railway is not liable to pay the compensation. Adding further, he submitted that this crucial aspect was over looked by the Tribunal and therefore, submitted that the award should be interfered.

5. This court does not find any merit or justification to agree with the contentions of the learned counsel for the appellant for the reason that the deceased was admittedly holding the ticket for journey from Velankanni to Bangalore on 15.05.2012 and travelled in Train No. 17316 but, however it has been contested that during the journey the deceased tried to get down at Ponmalai Railway station which is an unscheduled stop and when he started to get down, the train started to move, so he was not able to board the train, as a result, he fell down and succumbed to injuries. In the above said background, a perusal of the definition under Section 2 (29) of the Railway Act, 1989, clearly states that a person travelling with a valid pass or ticket is a bona fide passenger. Therefore, on the date of accident i.e., on 15.05.2012, the deceased was admittedly having ticket as a bona fide passenger. Secondly, it is not disputed that due to untoward incident, he died. Therefore, the learned Tribunal guided by the decision of the Hon'ble Apex Court reported in Union of India Vs. Prabhakaran Vijaya Kumar and others [2008 (4) MLJ 323 SC] holding that Section 124 lays down strict liability or no fault liability in case of railway accidents and if a case comes within the purview of Section 124 (A), it is wholly irrelevant as to who was at fault. In the said judgment, it also held that the accidental falling of a passenger from a train carrying passengers includes accidents when a bona fide passenger travelling with a valid ticket is trying to enter into a railway train and falls down during the process of travelling. In view of the above settled legal position, guided by the aforesaid mentioned judgment of the

Hon'ble Apex Court, the claim was rightly answered in favour of the claimant that the deceased holding a valid ticket is a bona-fide passenger and there was untoward incident and thereupon, the Claims Tribunal has fixed the award of compensation at Rs.4 lakhs with interest at the rate of 6% from 13.05.2015 till the date of order passed and thereafter, 9% p.a. till the date of actual payment.

6. In view of the foregoing reasons, this Court does not find any infirmity or illegality in the order passed by the Railway Claims Tribunal and the same is liable to be confirmed. Therefore, the Civil Miscellaneous Appeal is dismissed. The appellant/Southern Railway, Chennai is directed to deposit the award amount less the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the respondents/claimants are entitled to receive their share amount with proportionate interest as apportioned by the learned Claims Tribunal. Consequently, connected Miscellaneous Petition is also closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

DP

To

The Railway Claims Tribunal,
Chennai Bench.

Copy To

The General Manager,
Union of India owning Southern Railway,
Chennai.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.2350

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and
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MG (CO)
CA(12/04/2016)